REMARKS

Claims 27, 31 and 36 are pending in the application. Claims 27, 31 and 36 are amended herewith. Claims 1-26, 28-30 and 32-35 are canceled. The amendments to the claims introduce no new subject matter.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience, Applicants' remarks are presented in the order in which they were raised in the Office Action.

A. Non-Statutory Double Patenting

(a) Claims 27-30 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5,585,258.

Claims 31-35 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-9 of U.S. Patent No. 5,585,258 in view of Benson et al., U.S. Patent No. 5,258,496. Benson is cited for the teaching of recombinant fusion polypeptides being comprised in compositions during purification from the host cell.

Claim 36 remains rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent No. 5,597,691.

Claims 27 and 30 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 5,712,145.

Claims 31, 32 and 35 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-5 of U.S. Patent No. 5,712,145 in view of Benson et al., U.S. Patent No. 5,258,496.

Claim 36 remains rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 8 of U.S. Patent No. 5,712,145.

(b) Claims 27 and 30 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of copending Application No. 10/409,094, which is an application for reissue of U.S. Patent No. 5,585,258.

Claim 36 remains provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of copending Application No. 10/409,673, which is an application for reissue of U.S. Patent No. 5,597,691.

As applicants have withdrawn from the re-issue proceedings relating to the provisional judicially created obviousness-type double patenting rejections and therefore the claims of those patents will not be amended, applicants have amended the claims to recite SEQ ID NO: 70 or SEQ ID NO: 86. SEQ ID NO: 70 has 686 amino acids. SEQ ID NO: 86 has the same 686 amino acids at the C-terminus with an additional 155 amino acids at the N-terminus derived from super-oxide dismutase. By way of comparison, SEQ ID NOs: 63, 64, and 65 as recited in certain claims of U.S. Pat. No. 5,585,258 and U.S. Pat. No. 5,597,691, comprise 11, 9 and 202 amino acids that may be found within the 686 amino acids of SEQ ID NO: 70. Similarly, SEQ ID NOs: 66 and 67 as recited in certain claims of U.S. Pat. No. 5,712,145, comprise 299 and 199 amino acids that may be found within the 686 amino acids of SEQ ID NO: 70. Applicants respectfully submit that the pending claims are not obvious over the claims in the issued patents cited in the various judicially created obviousness-type double patenting rejections.

Applicants therefore respectfully request that the Examiner withdraw the judicially created obviousness-type double patenting rejections.

B. Claim Rejections under 35 U.S.C. § 112, First Paragraph

1. Rejection of claims 27-36 for lack of Written Description under 35 U.S.C. § 112, first paragraph

Claims 27-36 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, have possession of the claimed invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack written description support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 31, and 36 under 35 U.S.C. § 112, first paragraph.

2. Rejection of claims 27-36 for lack of enablement under 35 U.S.C. § 112

Claims 27-36 stand rejected under 35 U.S.C. § 112, first paragraph, because the specification allegedly fails to reasonably provide enablement for the pending claims.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack enabling support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 31, and 36 under 35 U.S.C. § 112, first paragraph.

C. Claim Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 27-36 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-

type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack written description support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 31, and 36 under 35 U.S.C. § 112, first paragraph.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 223002010004. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: September 14, 2009

Respectfully submitted,

By _____

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